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CHARLES ELMORE

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1931.

[No. 35,881]

[No. 79]

CHICAGO & EASTERN ILLINOIS R. R. CO.,
Petitioner,

vs.

INDUSTRIAL COMMISSION OF ILLINOIS and JOE THOMAS,
Respondents.

MOTION BY RESPONDENTS TO DISMISS THE WRIT OF CERTIORARI HERETOFORE GRANTED.

MORRIS K. LEVINSON, and
SAMUEL E. HIRSCH,
Counsel for Respondents.

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Now comes the Industrial Commission of Illinois and Joe Thomas, respondents in the above entitled cause, by Morris K. Levinson and Samuel E. Hirsch, their counsel, and move that the writ of certiorari heretofore granted in the above entitled cause be dismissed or recalled for the reason that this Court is without jurisdiction to hear and determine the writ heretofore granted because the proceeding before the Illinois Industrial Commission, which was reviewed by the Circuit Court of Cook County, as provided by the statutes of the State of Illinois, did not constitute a case or controversy to which the judicial power of this Court extends, for although the award of the Industrial Commission of Illinois was reviewed by the Circuit Court of Cook County, in the State of Illinois, said Court merely was acting as a higher administrative body in such review.

BRIEF IN SUPPORT OF MOTION.

Under the Act in force in the State of Illinois, commonly known as the Workmen's Compensation Act, the Industrial Commission of Illinois is vested with the exclusive jurisdiction to determine applications for compensation for injuries sustained by certain classes of employes arising out of or while in the course of the employment, including the power to grant or deny compensation to the injured party according to the law and evidence in each case.

The Act, approved June 10, 1911, in force May 1, 1912, Cahill's Illinois Revised Statutes, 1931, pp. 1431, *et seq.* (Section 15) empowers the Commission to take the testimony of witnesses and to adopt necessary rules to govern its hearings.

Section 18 of the Act provides that all questions arising under the Act, if not settled by agreement of the parties interested therein, shall, except as otherwise provided, be determined by the Industrial Commission.

Section 19 provides that any disputed questions of law or fact shall be determined as provided in the Act. The board is given the power to appoint an Arbitrator or a Committee of Arbitrators in case a claim is made for partial or total disability; authorizes the Arbitrator or Committee of Arbitrators to make such inquiries and investigation as the committee shall deem necessary; provides for a hearing by the committee of arbitration near the place where the accident occurred; gives authority to the com-

mittee to find whether the injury complained of was temporary or permanent; provides for a report of the Arbitrators or committee of arbitration to be filed with the Industrial Commission; and that the report of the committee of arbitration shall be final unless the aggrieved party petitions the board for a review of the decision of the Arbitrators, and provides for a hearing on review of the decision of the committee of arbitration by the Industrial Commission; provides for a review of the Arbitrator by any member of the Commission or, upon request of the parties, by the full members of the Commission, or any other members of the Commission who have not heard the matter; gives the Commission, in its discretion, power to find specially upon any question of law or fact, provided a written demand for such review has been issued; provides that the decision of the Commission, acting within its powers, shall, in the absence of fraud, be conclusive unless a review is taken to the Circuit Court of the county where any of the parties defendant may be found by writ of certiorari to the Commission; provides that the Circuit Court shall, upon such review, have power to review all questions of law and fact, except that no additional evidence shall be heard in the Circuit Court, but gives the Circuit Court the power to set aside a decision if it is contrary to the manifest weight of the evidence; gives the Circuit Court power to confirm or set aside the decision of the Industrial Commission, and if the decision is set aside, gives the Circuit Court power to enter such decision as is justified by the statute, and also gives the Circuit Court power to remand the cause to the Industrial Commission for futher proceedings, and to give said Commission such instructions as the Circuit Court deems proper; provides for a review by the Supreme Court of Illinois, in its discretion, upon writ of error to the Cir-

cuit Court; provides for the enforcement of an award by the entry of a judgment in the Circuit Court under certain conditions, etc.

Under Section 19 of the Illinois Compensation Act the Circuit Court has the power of direction to substitute its own administrative judgment for that of the Industrial Commission, thereby not reviewing the acts of an administrative body to the extent limited by the common law writ of certiorari, namely: to see that the powers conferred under the statute have been exercised in the manner and form provided, but as an appellate administrative body which has the power to substitute its own administrative decision to that of the Commission; and where the Court is given the power to substitute its own judgment for that of a commission acting in an administrative capacity, it is clear that the reviewing court is performing an advisory and administrative function, and the mere fact that the body to whom this administrative review had been granted is called a court, does not make its functions judicial.

Keller v. *Potomac Power Co.*, 261 U. S. 428.
Prentis v. *Atlantic Coast Line*, 211 U. S. 210.

The case of *Federal Radio Commission* v. *General Electric Company*, 281 U. S. 464, decided May 19, 1930, holds that the Federal Radio Commission is an administrative body and that the Circuit Court of Appeals of the District of Columbia, in reviewing or revising its acts and decisions, is also acting as a reviewing administrative body, and not as a court, and that therefore the United States Supreme Court has no power or jurisdiction under the Constitution to review the decisions of the Court of Appeals of the District of Columbia when it is sitting in review of a decision of the Federal Radio Commission.

So, in the case at bar, we submit that the Circuit Court of Cook County, in reviewing the proceedings of the Indus-

trial Commission, in a given case, is not acting as a court, but is acting as a higher reviewing and administrative body, exercising purely administrative powers and not judicial functions. The Supreme Court of Illinois has held, in *Brewerton Coal Company* v. *Industrial Commission*, 324 Ill. Sup. page 89, at page 91, that the Industrial Commission is not a judicial body and performs no judicial functions, citing *Savoy Hotel Company* v. *Industrial Commission*, 279 Ill. 329, and this, in light of the fact that the decision of the Illinois Industrial Commission must be based on evidence and when not so based shall be set aside.

The Act of Congress creating the Radio Commission and providing for the appeal and review to the Court of Appeals of the District of Columbia similarly provides for the taking of evidence, the appointment of Examiners to take evidence and make reports thereon, the power of the Federal Radio Commission to review the testimony of its Examiners, the power of the Court of Appeals of the District of Columbia to review the evidence, in very much the same manner as does the Illinois statute creating the Industrial Commission for a review of its decisions. Hence, if the Industrial Commission of Illinois is not a judicial body and performs no judicial functions, the Circuit Court in determining whether or not the Industrial Commission has performed its administrative functions in manner provided by statute, is not sitting as a court, but merely is sitting as a superior revising administrative body.

Prior to the Act, the right of an employe to recovery was based upon the theory that the employer owed the employe a legal duty not to injure him by any wrongful or negligent act, and had violated that duty. A trial under the common law was of course a judicial controversy, involving the questions of fact and of law.

One of the purposes of the Workmen's Compensation Act was to remove from the field of judicial controversy cases involving injuries to employes where said Act had been accepted by the employer and employe. The effect of this was to commit to an administrative body the determination of two questions: One, whether under the facts in a given case the injury complained of arose out of or while in the course of the employment, and, second, if so, the amount of compensation to which the injured employe was entitled. Such a proceeding is therefore not a judicial proceeding, is not a determination of a controversy based upon a legal duty owed to an individual and a breach of such duty, and therefore is not a case or controversy arising under the judicial power of the State nor of the Federal Government, nor under the Constitution of the United States, nor under the Act of Congress, but merely is a determination of an administrative body; and the Circuit Court of Cook County, in reviewing the decision of that body, also is not determining any judicial case or controversy, but merely is reviewing and revising, as an appellate administrative body, a proceeding of an inferior administrative body.

Further, the writ of certiorari by which the Circuit Court is given power to review the award of the Industrial Commission, is wholly statutory and is not the exercise of the common law power to review on the common law judicial writ of certiorari.

Nierman v. *Industrial Commission*, 329 Ill. 623.

We, therefore, respectfully submit that the writ of certiorari heretofore granted be dismissed or recalled.

Morris K. Levinson, and

Samuel E. Hirsch,

Attorneys for Respondents.